IN THE HIGH COURT OF JUDICATURE AT BILASPUR(CHHATTISGARH)

CRIMINAL APPEAL NO. 1276 /2002

UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE 1973

APPELLANTS (IN JAIL) : 1. Omprakash Verma , s/o Dirbindas Verma, aged 26 years r/o Ghumka, P.S. Ghumka, District Rajnandgaon (C.G.)

2. Jagatram , s/o Ramprasad Sahu, aged 32 years, r/o Village Seltikari, P.S. Dongargarh, District Rajnandgaon (C.G.)

4597/02
Filed on 11/12/02
by Shri D Rao Patel
Advocate

11/12/02 R. to D.R. (J)

VERSU

RESPONDENT : State of Chhattisgarh, through S.H.O., P.S. Supela, District Durg (Chhattisgarh)

(19)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO.1276 OF 2002

JUDGMENT FOR CONSIDERATION

Sd/-
J U D G E
24 /04/2003

HON'BLE THE CHIEF JUSTICE

I agree.

Sd/-
Chief Justice

Post it for: 25 /04/2003

Sd/-
L.C. Bhadoo
Judge

(50)

HIGH COURT OF JUDICATURE CHHATTISGARH ; BILASPUR

DIVISION BENCH: HON'BLE SHRI K.H.N. KURANGA, CJ
HON'BLE SHRI L.C. BHADOO, J

CRIMINAL APPEAL NO.1276 OF 2002

(1) Omprakash Verma

(2) Jagatram

Versus

State of Chhattisgarh

Present: Shri Alok Bakshi, counsel for the appellant.
Miss S. Singhai, Dy. Govt. Advocate, for the State/respondent.

JUDGMENT
(Delivered on of April, 2003)

The following judgment of the Court was delivered by

L.C. Bhadoo, J :-

Accused/appellants Omprakash Verma and Jagatram have preferred this criminal appeal being aggrieved by the judgment of conviction and sentence dated 22/11/2002 passed by the learned Seventh Additional Sessions Judge (Fast Track Court), Durg by which the learned Additional Sessions Judge after holding the above accused persons guilty of the offence under Section 302 read with Section 34 of the Indian Penal Code convicted each of them under the said Sections and sentenced to undergo imprisonment for life and to pay fine of Rs.1,000/- in default of payment of fine to further undergo simple imprisonment for six months.

(2) The relevant facts for the disposal of this criminal appeal are that Mandas Verma - brother of Dirbin Das (since deceased) gave an intimation (Ex.P/12) to the Police Station, Supela, district Durg that they are three brothers and they are residing in separate houses and the families of all the three brothers are residing in their village Dumka, district Rajnandgaon. His brother namely Dirbin Das was working as Senior Technician in the B.S.P.. Yesterday his brother after his duty came to the residence in the afternoon and after taking his meal he went for rest and in the evening at about 6.30 his brother met his son namely Tikeshwar and in the evening at about 7.30 when he came back from his work he saw that the light was on in the residence of his brother. Thereafter after taking his dinner at about 8-8.30 in the night he went for sleep. Today on 31/10/2000 in the early morning at about 5.45 when he woke up from the sleep the light of the house of his brother was on, but the house was not locked from outside. On this, he thought that his brother might not have gone on duty in the first shift. He called him from the backside of the house but there was no response. Therefore, he came from the front side of the house and pushed the door which was lying open and when he looked inside the room he found that the TV and the fan were on and the light was also on. He switched off the TV and the fan. On his taking turn back he saw that his brother's body was lying on the floor near the gate. He again put on the light and saw that his brother's body was lying on the floor drenched with blood and there were injuries on the face caused by sharp weapon. When he saw him from the near he was already dead. Therefore. He has come along with his son Tikeshwar and Milauram for giving information. This Merg intimation was taken on record and on the basis of this intimation FIR (Ex.P/13) was registered by the Station House Officer Ajit Yadav, who took up the investigation. During the investigation the statement of

witness Surendra Sahu was got recorded under Section 164 of the Code of Criminal Procedure. The Panchanama (Ex.P-2) of the dead body was prepared after giving the notice (Ex.P/1) to the witness. The simple soil and the blood stained soil were recovered from the spot vide Ex.P/3 and vide Ex.P/4 old slipper (Chappal) of the deceased, one safety pin and one Kanthi Mala were taken into possession. One iron hammer which was lying under the body of the deceased was also recovered vide Ex.P/5. The post mortem (Ex.P/15) of the dead body of the deceased was prepared by Dr. S.P. Kesharwani after post mortem. Accused Omprakash was arrested and during the police custody he gave the memorandum (Ex.P/5) under Section 27 of the Evidence Act and at the instance of the accused one dagger, one full sleeves shirt of yellow colour, one full pant of blue colour, all stained with blood and one scooter bearing registration no. MP-24Y/4737 were recovered vide seizure memo Ex.P/6. One post card was also taken into possession vide Ex.P/7. One letter (Ex.P/10) which was hand written by the accused Omprakash addressed to the Station House Officer, Police Station was also taken into possession vide seizure memo Ex.P/11 and after completion of the investigation the challan was filed against accused Omprakash and Jagatram under section 302 read with Section 34 of the Indian Penal Code.

(3) The learned Seventh Additional Sessions Judge being satisfied with the record of the file framed the charge against accused appellants Omprakash and Jagatram under Section 302 and in the alternative 302 read with Section 302 read with Section 34 of the Indian Penal Code which the accused persons denied.

(4) The prosecution in order to prove the offence against the accused appellants examined in all eighteen witnesses at the trial. The statements of the accused persons were recorded under Section 313 of

the Code of Criminal Procedure. The accused persons simply denied the statements of the witnesses and other material appearing against them, saying that they are innocent.

(5) After hearing the arguments of the learned Public Prosecutor and the counsel for the accused, the learned Additional Sessions Judge convicted the accused appellants as mentioned above.

(6) We have heard Shri Alok Bakshi, learned counsel appearing for the accused/appellants and Miss Sharmila Singhai, learned Dy. Govt. Advocate, appearing for the State/respondent.

(7) As far as the question of homicidal death of deceased Dirbin Das is concerned, the same has not been disputed by the learned counsel appearing for the accused/appellants. Moreover, Dr. S.P. Kesharwani (PW-9) has stated that he conducted the post mortem on the dead body of the deceased and in all he found thirty injuries on his body which were incised, cut and stab wounds and the deceased died on account of the internal and external excessive bleeding through the injuries. His post mortem report is Ex.P/15 and the nature of the death was homicidal. Therefore, the death of deceased Dirbin Das was homicidal.

(8) There is no eyewitness in this case. The whole prosecution case rests on the following circumstances:

(a) Accused Omprakash made extra judicial confession before PW-5 Surendra Sahu.

(b) The weapon of offence the dagger, blood stained clothes, full sleeves shirt and full pant of the accused and the scooter of the accused Omprakash were recovered

at the instance of the accused in pursuance of the information given by him under Section 27 of the Indian Evidence Act.

(c) The recovery of the letter (Ex.P/10) which is said to be written by accused Omprakash to the Station House Officer, Supela Police Station admitting the murder of his father Dirbin Das.

(9) It is settled law that, in a case based on circumstantial evidence, before the Court can record conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point only to the guilt of the accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused.

(10) Now it is on the basis of these principles that we shall examine the circumstantial evidence relied upon by the prosecution to see whether the circumstantial evidence available in this case has stood up to the standard of proving the offence against the accused appellants as per the settled law.

(11) As far as the question of extra judicial confession before witness PW-5 Surendra Sahu is concerned, this witness has turned hostile to the prosecution and specifically said that accused Omprakash had not confessed the crime of committing the murder of his father before him. He has further said that the statement under Section 161

as also under Section 164 of the Code of Criminal Procedure were made by him on account of the fear created by the Police. He has gone to the extent of saying that before making all these statements he along with Omprakash accused were in the Police custody even though formally they were not arrested. In view of this statement no reliance can be placed on the statement of this witness Surendra Sahu. However, the learned trial Court placed reliance on the statements of this witness holding that it is not proved that this person was in police custody more than ten days before making the statement and appending his signatures on the recoveries memos. This witness has particularly said that everything was done under the pressure of the police and nowhere in his statement anything has come which connects the accused appellants in the murder of the deceased.

(12) Now coming to the recovery of Khukhari, blood stained clothes of the accused and also the letter (Ex.P/10) which is said to be written by the accused to the Station House Officer, Police Station confessing that he has committed the heinous crime. Much reliance has been placed by the trial Court on this part of the circumstantial evidence.

(13) As far as the recovery of the blood stained clothes and the dagger at the instance of the accused Omprakash is concerned, PW-5 Surendra Sahu has said in his statement that no recovery was effected in his presence, nor the police enquired from the accused in his presence. He stated that the memorandum (Ex.P/5) and the recovery memo (Ex.P/6) bear his signature but he simply signed where ever the police said. No recovery was made in his presence. Similarly, this witness has said that the letter (Ex.P/10) bears his signature and recovery memo of this letter (Ex.P/11) also bears his signature, but this letter was not

taken into possession in his presence. He has said that even the police had taken him to the place in the handcuffs where his statement under Section 164 of the Code of Criminal Procedure was recorded. PW-3 Tikeshwar Prasad has said that he had not seen the accused Omprakash in the fateful night going to the village. Another witness of the recovery is PW-12 Sheshnarayan Singh. Learned counsel appearing for the accused persons has assailed the genuineness of this witness and argued that he is the police witness and in other cases also the police has used him. Moreover, this witness is resident of Supela and not of Dumka villge from where the recoveries were said to have been made. Because he is the police witness, therefore, the police obtained his signatures in the Police Station, Supela itself and he had not gone to village Dumka. We have perused the evidence of this witness and to the above extent the arguments of the learned counsel for the accused persons are not without force. In the examination-in-chief he has said that the accused gave the information (Ex.P/5) in his presence and the items were recovered through Ex.P/6. But in the cross examination he has admitted that apart from this case in other one more case he is a Police witness. He cannot tell the name of that case. He stated that it is wrong to say that he is a witness of 7 to 8 cases. In the afternoon a Constable of Supela Police Station called him and therefore he went to the Police Station. His brother is also in the Police so he knows the police people. Further in the cross examination he has said that how much time was taken in making the recoveries at Dumka he does not know. At what time they started from the Police Station he does not know. He does not remember that how much time he remained in the Police Station. He signed on 2-3 papers on that day. He cannot tell that from Durg to which side and which direction they went to reach Dumka. He went to village Dumka for the first time, therefore, he cannot tell

that from which side they entered Dumka village. He does not know the neighbours of accused Omprakash. He cannot tell that who else were residing in the house of the accused. He did not go to the residence of Omprakash. What was the number of the scooter he did not know and the scooter was of which make he does not know. He does not know whether the scooter was seized or not. Up to what time they stayed in Dumka he does not remember. At what time they reached back at Supela he cannot tell but the Sun had already set by that time. He is a Vice President of Congress Committee; therefore, he often goes to the Police Station. In earlier case under Section 302 and in another Narcotic case he became the witness. He does not remember that in both the cases for which fact he was the witness. The above reply and the fact that he was earlier a Police witness in some cases make this witness and the recovery from the spot in his presence doubtful. But why the police have not made a local witness from where these recoveries were made is not explained. Why this person from Supela was taken and more particularly in view of the statement, his presence at the time of the recovery of the articles is doubtful. Therefore, looking to the statements of both the witnesses namely Surendra Sahu and Sheshnarayan Singh the recovery cannot be considered as proved. Moreover, it is said that the dagger by which the injuries were caused on the body of the deceased and the clothes of the accused were stained with blood and the same were sent for chemical examination, but there is no report on record by which it can be said that these articles were stained with human blood and the blood group of the blood found on the clothes of the accused, the blood of the deceased and the blood found on the dagger was same. Without this, the recovery of these items cannot be connected with the murder of the deceased by the accused appellants. The learned Additional Sessions Judge also relied upon the

statement of Dr. Kesharwani (PW-9) that the injuries on the body of the deceased could be caused by dagger which was shown to him and which was said to have been recovered at the instance of the accused. Therefore, according to the learned Additional Sessions Judge, this circumstance also shows that the injury was caused by the accused by this dagger. As mentioned above, even if it can be said that the injuries on the body of the deceased can be caused by such type of dagger that itself is not sufficient to prove that the injuries were caused by the deceased by this dagger because no report of the serologist or FSL is before the Court so as to connect this dagger with the injuries of the deceased without which it cannot be considered that the injuries were caused by this dagger only and that too by the accused because such type of daggers are available in the market. Moreover, such type of injuries can be caused by any sharp edged weapon i.e. dagger or knife. Therefore, based on the statement of the doctor the accused cannot be connected with the crime committed.

(14) Now, coming to the letter (Ex.P/10) written by accused Omprakash to the Station House Officer, Supela Police Station admitting the heinous crime committed by him. First of all, on the recovery of this letter only one witness Surendra Sahu (PW-5) has been produced. As mentioned above he has denied the recovery of this letter in his presence. The letter is on a simple paper and the recovery of the same by the accused has also been denied. In the light of the investigation made by the Investigating Officer in this case as also the recoveries discussed in the previous part of this judgment, it cannot be believed that any accused will write such a letter to the Station House Officer of the Police Station admitting the guilt of the crime. More particularly, looking to the facts of this case it becomes more doubtful that any recovery was made in presence of PW-5 Surendra Sahu.

Moreover, if we look at the contents of the letter after writing ten things about the bad habits of his father just after tenth point he has written that now it is known that this heinous thing has taken place. Even though I have not done this heinous thing with my own hands, but I have got it done through someone else. But the end of the person who was responsible for mental disturbance of the family members has come and now everybody will remain with peace. If we look at this, which is most vital part of this letter, he has not said that he himself has committed the crime. Whereas the police case is that he committed the murder of his father along with co-accused Jagatram and the weapon of offence, the dagger, by which the injuries are said to have been caused has been recovered at the instance of this accused shows that he himself has committed the murder, not the other person. He has also not written in the letter through whom he has got executed this heinous crime. Since there is no other evidence and even the prosecution has not been able to connect the accused through the weapon of offence, therefore merely based on this letter in which he has not confessed in so many words that he has committed the murder, the prosecution story cannot be considered to be reliable. Rather, to this extent this letter is contrary to the prosecution case by which the prosecution has tried to prove that the accused Omprakash along with accused Jagatram themselves had committed the murder of the deceased, whereas in the letter accused Omprakash has said that he himself has not committed the murder. Therefore, based only on this letter the prosecution case cannot be considered as proved. As far as the other accused Jagatram is concerned, there is no iota of evidence against him that how he was responsible and connected with this heinous crime. Even though it has come on record that Jagatram is the friend of the accused but without

any evidence, merely because of friendship it cannot be considered that Jagatram has committed the heinous crime.

(15) In the result, we find not only that none of the circumstances has been established beyond reasonable doubt but also that all the circumstances, even taken together, do not lead only to the hypothesis of the guilt of the appellants and are not inconsistent with the theory of their innocence.

(16) In view of the above, the judgment holding the accused persons guilty of the offence under Section 302 read with Section 34 of the Indian Penal Code cannot be sustained. In view of the reasons assigned in the previous part of this judgment, the judgment of the trial Court is not based on sound principles as settled by the Apex Court with regard to the circumstantial evidence for proving the offence.

(17) In the result, the appeal of the appellants is allowed. The judgment of conviction dated 22/11/2002 holding guilty of the accused persons is set aside. The appellants are acquitted of the charges under Section 302 read with Section 34 of the Indian Penal Code and they be set at liberty forthwith if not required in any other case.

Sd/-
Chief Justice

Sd/-
L.C. Bhadoo
Judge

Brajesh*